

# AGENDA ITEM

MAY 54-142

DATE: May 10, 2012

TO: Members, Planning, Program Development and Budget Committee  
Members, Board of Trustees

FROM: Peggy Van Horn, CFO

SUBJECT: Audited Statement of Expenditures of Mandatory Membership Fees  
for Year Ended December 31, 2011 and Independent Auditor's Report  
(formerly called Chargeable/non-chargeable) – proposed acceptance

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## EXECUTIVE SUMMARY

The accounting firm of Macias, Gini & O'Connell, LLP, has audited that Statement of Expenditures of Mandatory Membership Fees and prepared its Independent Auditor's Report. After its receipt by the Board of Trustees and later in the year when the annual billing statements are mailed to members, the audited statement and the auditor's report will be published by posting on the State Bar's Web site with notice to members in the billing statements and the December issue of the *California Bar e-Journal*.

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## BACKGROUND

To comply with the constitutional requirements for collection of mandatory membership fees under *Keller v. State Bar of California*, 496 U.S. 1 (1990), the State Bar must prepare each year an audited statement of its major categories of expenses showing that no mandatory bar dues were used for political or ideological activities not "necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the State." For the 2013 membership fees, staff has prepared a Statement of Expenditures of Mandatory Membership Fees based on the recently completed audit of the State Bar's 2011 financial statement. The accounting firm of Macias, Gini & O'Connell has audited the statement and issued its report for receipt and publication in conjunction with the annual billing of membership fees for 2013.

## DISCUSSION

### ***Mandatory Dues and Keller Requirements***

State law requires members of the State Bar to pay an annual membership fee as a condition to the practice of law. Cal. Bus. & Prof. Code § 6143. In *Keller v. State Bar of California*, 496 U.S. 1, 14 (1990), the United States Supreme Court held that the First Amendment prohibits the State Bar from compelling its members to pay for any political or ideological bar activities that are not necessarily or reasonably related to regulating the legal profession or improving the quality of legal services available to the people of the state. To comply with this constitutional requirement, the State Bar must provide each member the option to deduct from the annual membership fee the amounts that would be used to support the non-chargeable activities outside of *Keller* purview.

### ***Dues Deductions***

Beginning in 1991, the Board set a deduction to the membership fee annually, varying between one and five dollars, for activities deemed outside of *Keller*, such as certain legislative positions of the State Bar, its former Conference of Delegates, and Sections. In 1997, in his veto message of the Bar's fee bill, Senate Bill No. 1145, Governor Pete Wilson cited member dissatisfaction with the State Bar's response to *Keller* and allegations that the State Bar continued to spend bar dues on legislative and political positions offensive to some of its members. In 2000, when funding to the State Bar was restored, the California Legislature preempted the Board and imposed a \$5 deduction for legislative and related activities of the State Bar which fell outside of the parameters of *Keller*. Cal. Bus. & Prof. Code § 6140.05. The Legislature further restricted the amount that the State Bar could budget, collect and expend on such legislative activity to the sum total paid voluntarily by members electing not to take the \$5 deduction. In addition, the Legislature prohibited the use of any bar dues to fund the Conference of Delegates or Sections, requiring instead that they be funded separately by their own voluntary fees or donations. Cal. Bus. & Prof. Code § 6031.5. (In 2002, the functions of the Conference were passed on to the newly created Conference of Delegates of California Bar Associations, an organization wholly independent of the State Bar.)

Following the 1999 trial court judgment in *Brosterhous v. State Bar of California*, which held that certain other bar activities were outside of *Keller*, the Board followed the Legislature's approach and adopted a similar set deduction to fund the activities deemed non-chargeable by the court. These activities included those related to eliminating bias in the legal profession provided by State Bar standing committees such as the Ethnic Minority Relations Committee, Committee on Women in the Law, Committee on Sexual Orientation Discrimination, and the Committee on Legal Professionals with Disabilities; the bar leaders conference and mid-year meeting; various services to local bars; and other activities to maintain relations with other bar associations. To comply with the judgment, the Board has provided an additional \$5 deduction for the bar relations and elimination of bias activities and has limited funding for these activities to the voluntary fee paid by members not taking the deduction or other voluntary sources.<sup>1</sup>

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<sup>1</sup> In 2010, the Legislature established a new \$10 deduction for three years, beginning in 2011, for those members who do not wish to have that amount of his or her bar dues allocated to the "Temporary Emergency Voluntary Legal Services Assistance Option fund" to provide voluntary financial support for nonprofit organizations that provide free legal services to persons of limited means. This allocation,

## ***Statement of Expenditures of Mandatory Membership Fees***

In addition to providing these deductions, the State Bar prepares a Statement of Expenditures of Mandatory Membership Fees (formerly “Statement of Chargeable and Nonchargeable Expenses”). See *Keller*, 496 U.S. at 17 citing *Chicago Teachers v. Hudson*, 475 U.S. 292, 310 (1986). The statement is prepared using the State Bar’s most recently completed audited financial statement and shows the major categories of expenses with a brief description of each category so that each bar member may gauge whether the expense is justified under the *Keller* standard. See, *Keller*, 496 U.S. at 17; *Chicago Teachers v. Hudson*, 475 U.S. at 307 n. 18.<sup>2</sup> An independent auditor must then verify the Statement of Expenditures of Mandatory Membership Fees. The Statement of Expenditures of Mandatory Membership Fees is then published by posting on the State Bar’s Web site at [www.calbar.ca.gov](http://www.calbar.ca.gov), and providing notice to bar members in the annual membership billing statement and in the December issue of the California Bar e-Journal that is e-mailed to members.

The purpose of the Statement of Expenditures of Mandatory Membership Fees is to provide an explanation of the mandatory membership fees that each bar member must pay under state law in order to practice law in California. The statement describes and separates expenditures of mandatory membership fees by program into “chargeable” and “non-chargeable” categories. Because of the voluntary deductions explained above which provide funding with voluntary revenues for the full expense of programs that could be found non-chargeable, the statement does not present any non-chargeable activities that are supported by the mandatory portion of the annual membership fees.

To explain the basis for the 2013 membership fee, staff has prepared a Statement of Expenditures of Mandatory Membership Fees using the recently completed audited financial statement for the period ending December 31, 2011.<sup>3</sup> The accounting firm of Macias, Gini & O’Connell has audited the 2011 Statement of Expenditures of Mandatory Membership Fees and prepared its Independent Auditor’s Report.

The following is a brief summary of the expenses included in the Statement of Expenditures of Mandatory Membership Fees.

*Chargeable expenses:* (1) *Discipline* includes the expenses of the Office of the Chief Trial Counsel, the State Bar Court, Client Security Fund; Fee Arbitration; (2) *Administration of Justice* includes only the cost of the Judicial Nominees Evaluation Commission; (3) *Administration of the Profession* includes the expense of membership

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which increased to \$20 for 2012, remains in effect only until January 1, 2014 unless a later enacted statute deletes or extends that date. Cal. Bus. & Prof. Code § 6140.01. Because this option is voluntary, it also will not incur any expenditures attributable as “chargeable” or “non-chargeable” to mandatory membership fees.

<sup>2</sup> A member may dispute the State Bar’s determination that the expense may be charged to the member as part of the mandatory dues and have the challenge heard by an independent decision-maker. Rules of State Bar, Rule 2.17; see, *Chicago Teachers v. Hudson*, 475 U.S. at 307.

<sup>3</sup> The statement was prepared with the assumption that the State Bar will continue to use only voluntary fees paid by members not taking the deduction for bar relations and elimination of bias activities to fund those activities.

billing and records; member services; and the Multi-Jurisdiction Practice program (4) *Lawyer Assistance* includes cost of the Lawyer Assistance Program required under Business and Professions Code section 6231; (5) *Competence* refers to Professional Competence, Planning and Development program (including the Ethics Hotline, the Committee on Professional Responsibility and Competence, publication of the Compendium on Professional Responsibility); (6) *Program Development* includes Legal Services Access and the California Young Lawyers Association; (7) *Information Technology Special Assessment Fund*, which is used to upgrade the information technology system, including purchasing and maintenance costs and both computer hardware and software; (8) *Building Special Assessment Fund* which will fund new facilities for the State Bar in Southern California; and (9) *Allocated Administrative Overhead* (e.g., human resources, finance and financial planning, information technology and services, printing, mail, legal counsel, executive offices, and the Board of Governors).

*Non-chargeable expenses:* As directed by the Board, expenditures on legislative activities are limited to those member fees paid voluntarily by members not taking the \$5 deduction under Cal. Bus. & Prof. Code §6140.05. Consequently, no mandatory dues are used to fund the State Bar's legislative activities, including those of State Bar Sections which must also be separately funded by their voluntary section dues. Similarly, support of the program activities in the area of bar relations and elimination of bias in the legal profession is voluntary and the amount of expenditures limited to the sums collected from those members electing not to take the \$5 deduction that is offered. Because these expenses are restricted to voluntary fees, there were no non-chargeable expenses attributable to mandatory bar dues in 2011.

**FISCAL / PERSONNEL IMPACT:**

None.

**RULE AMENDMENTS:**

N/A.

**BOARD BOOK IMPACT:**

N/A.

## **RECOMMENDATION**

Staff recommends that the Board receive the audited Statement of Expenditures of Mandatory Membership Fees for the year ending December 31, 2011, and Independent Auditor's Report. It is further recommended that the Board authorize its publication when the annual billing statements are mailed to members by the posting of the statement and report on the State Bar's Web site together with notice of the posting in the billing statement and the December issue of the California Bar e-Journal.

## **PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Planning, Program Development and Budget Committee agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Planning, Program Development and Budget Committee recommends that the Board receive the audited Statement of Expenditures of Mandatory Membership Fees in the form this day before the Board, for the year ended December 31, 2011, and the accompanying Report of the Independent Auditor; and it is

**FURTHER RESOLVED**, that when the billing of the 2013 membership fees is mailed to members of the State Bar, staff is directed to post the Statement and Report on the State Bar's Web site and to notify members of the posting in the December 2012 issue of the State Bar's e-Journal.

## **PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board concur with the Planning, Program Development and Budget Committee's recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby receives the audited Statement of Expenditures of Mandatory Membership Fees in the form this day before the Board, for the year ended December 31, 2011, and the accompanying Report of the Independent Auditor; and it is

**FURTHER RESOLVED**, that when the billing of the 2013 membership fees is mailed to members of the State Bar, staff is directed to post the Statement and Report on the State Bar's Web site and to notify members of the posting in the December 2012 issue of the State Bar's e-Journal.